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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **WESTERN DIVISION – ROYBAL FEDERAL BUILDING**
11

12 ANTHONY N. CHAI,

13 Plaintiff,

14 v.

15 NETFIRMS.COM, INC., *et al.*,

16 Defendants.

CASE No. CV11-06988-GHK (CWx)

**NETFIRM.COM, INC.'S NOTICE
OF EX PARTE APPLICATION
FOR ORDER GRANTING
LEAVE TO FILE SUR-SUR-
REPLY**

Date: February 6, 2012 [vacated]
Time: 9:30 a.m.
Judge: The Hon. George H. King
Crtrm: 650

*([Proposed] Order lodged
concurrently herewith)*

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that Defendant Netfirms.com, Inc. ("Netfirms")
 3 will move, and hereby does apply *ex parte* to this court for an order permitting
 4 Netfirms to file a short sur-sur-reply to Plaintiff Anthony Chai's sur-reply. This
 5 motion is contingent on the Court's ruling on Plaintiff's application for leave to file
 6 his sur-reply. Should the Court deny Plaintiff's application, then Netfirms will
 7 withdraw this motion.

8 Netfirms is entitled to the requested relief because Plaintiff's Sur-Reply
 9 raises new arguments that he should and could have properly raised in his
 10 Opposition to Netfirms' Motion to Dismiss the First Amended Complaint, and
 11 which Netfirms will have no chance to refute, as the hearing on this matter has
 12 been taken off-calendar.

13 Netfirms satisfies the requirements for *ex parte* relief. First, it has moved
 14 expeditiously to bring this issue before the Court. Netfirms first received
 15 Plaintiff's *Ex Parte* Application For Order Granting Leave To File Sur-Reply (the
 16 "Application") at 7:25 p.m. on February 6, 2012, when Plaintiff filed the
 17 Application via the Court's ECF system. See Declaration of Julie S. Turner in
 18 Support of *Ex Parte* Application ("Turner Decl."), ¶ 3. Netfirms' counsel provided
 19 notice of intent to seek *ex parte* relief on February 7, prior to filing, and filed these
 20 papers on February 7. See Turner Decl., ¶¶ 4-6. Netfirms cannot seek leave to file
 21 a sur-sur-reply under ordinary noticed motion procedure because this Court could
 22 rule on the under-submission motion to dismiss and on Plaintiff's Application at
 23 any time.

24 Pursuant to Local Rule 7-19.1, notice of the instant Application was
 25 provided to Plaintiff's counsel prior to filing on February 7, 2012 at approximately
 26 2:30 p.m. (Turner Decl., ¶¶ 4-5). Counsel for Netfirms was able to inform Allison
 27 M. Lefrak and Mary-Christine Sungaila, the attorneys representing Plaintiff, of

1 Netfirms application (the instant application). Both counsel indicated that Plaintiff
2 intends to oppose Netfirms' application. (Turner Decl., ¶ 4-6).

3 The name, address, and telephone numbers for Plaintiff's counsel are as
4 follows:

- 5 • Mary-Christine Sungaila, SNELL & WILMER L.L.P., 600 Anton
6 Boulevard, Suite 1400, Costa Mesa, CA 92626-7689, Telephone 714-
7 427-7000, email mcsungaila@swlaw.com
- 8 • Allison M. Lefrak, Human Rights USA, 2029 P Street, N.W., Suite
9 202, Washington, DC 20036, Telephone 202-296-5702, email
10 alefrak@humanrightsusa.org

11 This application is based upon this Notice, the attached Memorandum of
12 Points and Authorities, the accompanying Turner Declaration, the Proposed Order
13 lodged concurrently herewith, the pleadings, records, and files in this action, and
14 such additional evidence and argument as considered by the Court.

15
16 Respectfully Submitted,

17 Dated: February 7, 2012

TURNER BOYD LLP

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19 By: /s/ Julie S. Turner
20 Julie S. Turner

21 *Attorneys for Defendant*
22 *Netfirms.com, Inc.*
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